

Service Date: January 30, 2001

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER of MONTANA	)	UTILITY DIVISION
POWER COMPANY'S Request for an	)	
Accounting Order to Track the Costs	)	DOCKET NO. D2000.12.215
Resulting from the City of Billings	)	
Right-of-Way Management	)	ORDER NO. 6320
Ordinance No. 00-5133.	)	

**Billings Right-of-Way Management Ordinance Accounting Order**

**FINDINGS OF FACT**

1. On October 23, 2000, the City of Billings adopted Ordinance No. 00-5133 which imposed a 4 percent annual tax on entities like Montana Power Company (MPC) who "install, erect, hang, lay, bury, draw, place, construct, reconstruct, maintain and operate communication facilities or utility facilities upon, across, beneath, over or in any public right-of-way for the purpose of providing any telecommunications services or utility services to persons located in Billings." The four percent tax applies to gross revenue accruing from the provision of utility services within Billings. The City of Billings justified this franchise tax in part by asserting the City rights-of-way are valuable public property acquired and maintained by the City and State and that the City has a fiduciary obligation not to give away this property for private use without public compensation.

2. In a letter dated November 21, 2000, the Billings Assistant Administrator notified MPC that this Ordinance would take effect on Thursday, November 23, 2000. The City further advised that companies who currently have utility lines or telecommunication lines within the City rights-of-way would have three months from the date of implementation, or February 23, 2001, to obtain and apply for a franchise or license. The City stated that the fee would go into effect with the Ordinance's effective date and become payable retroactively to that date upon grant of the franchise or license.

3. By citizen petition, the tax will be subject to a public vote next November.
4. In the meantime, however, MPC will be paying the tax as levied and incurring costs to administer and implement the tax. The additional administration and implementation costs would not exist without the tax.
5. The tax as levied and the associated costs to administer and implement the tax resulting from the Billings right-of-way Management Ordinance are not reflected in current rates.
6. Absent an Accounting Order, these costs would be unrecovered. MPC would incur expense without matching revenue. Therefore, MPC requests the Commission issue an Accounting Order allowing it to track and accumulate these costs until such time that they can be included in rates for Billings customers.
7. Further, it is necessary to account for these unrecovered costs as deferred revenue, which will be recovered prospectively from Billings customers. To compensate MPC for the delay in receipt of these deferred revenues, a carrying charge equal to 6 percent should be accrued on outstanding balances, compounded annually.
8. Nothing in this Accounting Order shall be considered as precedent for the treatment of these costs, except as specifically stated herein, in any future proceedings, or interpreted to limit the Commission's authority in making the determination of which costs should be included in rates.
9. Approval of this Accounting Order is for accounting purposes only. This Order is not to be construed as, nor is it in any way, a directive as to the proper accounting treatment for costs associated with the Billings right-of-way Management Ordinance, or an approval of either the actual numbers involved, the accounting method used, or the assumptions underlying those numbers. Most importantly, this Order does not imply or direct in any fashion that costs associated with the Billings right-of-way Management Ordinance deferred pursuant to this Order will be at any time reflected in rates.

### **CONCLUSIONS OF LAW**

1. The Montana Power Company is a public utility furnishing electric and natural gas service to consumers in the State of Montana, subject to the supervision, regulation and control of this Commission. Title 69, § 69-3-102, MCA.

**ORDER**

1. The Commission authorizes MPC to track and accumulate the costs and authorizes the recording of the deferred revenues associated with the costs resulting from the implementation of the Billings right-of-way Management Ordinance. Such costs will be treated upon resolution of the Billings right-of-way Management Ordinance issue.

2. This authorization is effective for costs incurred from the issuance of this Order until December 31, 2001.

Done and Dated this 29<sup>th</sup> day of January, 2001 by a vote of 5 -0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GARY FELAND, Chairman

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JAY STOVALL, Vice Chairman

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BOB ANDERSON, Commissioner

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MATT BRAINARD, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.